

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

EUTAW CONSTRUCTION COMPANY, INC. and
ASSOCIATED GENERAL CONTRACTORS OF
MISSISSIPPI, INC.,
Plaintiffs,

v.

No. 1:97CV79-S-D

NORTH ARKANSAS WHOLESALE CO., INC.,
BRANCH HIGHWAYS, INC., and LIBERTY
MUTUAL INSURANCE GROUP,
Defendants.

OPINION

This cause is before the court upon the plaintiffs' motion to remand its cause of action to the Chancery Court of Monroe County. At the center of this controversy is a determination of which party bears the ultimate responsibility of providing worker's compensation benefits to an injured employee.

FACTS

Branch Highways, Inc., a Virginia citizen, contracted with North Arkansas Wholesale Co., Inc., an Arkansas citizen, to build a Wal-Mart Distribution Center in New Albany, Mississippi. Branch Highways then entered into a written contract with Eutaw Construction, Inc., a Mississippi citizen, to construct a sanitary sewer system for the project. Provisions within both contracts provided that North Arkansas as the owner would provide insurance coverage including workers' compensation coverage and, additionally, that the contractor and his sub-contractors would be named as insureds. Separate and apart from the written contract between Branch and Eutaw, the

parties entered into an oral agreement for the “rental and use of a bulldozer with an experienced operator.” During performance of the oral contract, the bulldozer operator suffered a back injury which required surgery. The worker is expected to be permanently and totally disabled. Eutaw voluntarily began providing compensation benefits upon, according to Eutaw, North Arkansas’ refusal to do so.

DISCUSSION

Eutaw and Associated General argue that this action is not removable to federal court under 28 U.S.C. §1445(c) which provides that “a civil action in any State court arising under the workmen’s compensation laws of such State may not be removed to any district court of the United States.” By contrast, North Arkansas and Liberty Mutual argue that the controversy involves a contractual dispute rather than a workmen’s compensation issue. Branch argues that the action was removable but that upon denial of the remand, it intends on filing a motion to dismiss for lack of subject matter jurisdiction in that this action arises under the Mississippi Workmen’s Compensation Act.¹ The injured worker is not a party to this suit and apparently has no complaint with regard to his award. The only issue is whether this cause of action “arises under” the Mississippi Workmen’s Compensation Act.

In all of the cases relied upon by the parties on both sides, the claimant (the injured worker) was a party to the suit. None of the cited cases are instructive for the case at bar. However, a case which escaped notice by all the parties, appears to provide guidance on the issue. In *U.S.F. & G.*

¹For the action to have been properly removed, there must be subject matter jurisdiction which is precisely the issue at bar.

v. Collins, 95 So.2d 456 (Miss. 1957), *judgment corrected by* 96 So.2d 456 (1957), the court held that the Workmen's Compensation Commission had no power to direct one insurance carrier to reimburse another for payments erroneously made by the latter. The court reasoned that the compensation commission is an administrative agency exercising only those powers which are specifically granted to it by statute and, therefore, the commission is not authorized "to try equitable and legal issues involved when a payment of money is made by one through a mistake of fact and law."

Through an amendment enacted in 1987, which also escaped notice by all the parties, the Mississippi Legislature saw fit to grant the Workmen's Compensation Commission the authority it had previously lacked. Section 71-3-37(13) of the Mississippi Code reads as follows:

Whenever a dispute arises between two(2) or more parties as to which party is liable for the payment of workers' compensation benefits to an injured employee and there is no genuine issue of material fact as to the employee's employment, his average weekly wage, the occurrence of an injury, the extent of the injury, and the fact that the injury arose out of and in the course of the employment, the commission may require the disputing parties involved to pay benefits immediately to the employee and to share equally in the payment of those benefits until it is determined which party is solely liable, at which time the liable party must reimburse all other parties for the benefits they have paid to the employee with interest at the legal rate.

At the very heart of this matter is Eutaw's desire to be reimbursed for payments it believes it has erroneously made. Because the Mississippi Legislature has granted the commission with the authority to order reimbursement between carriers, this court finds that this cause of action clearly "arises under" the workmen's compensation laws of Mississippi. "A civil action in any State court arising under the workmen's compensation laws of such State may not be removed to any district court of the United States." 28 U.S.C. §1445(c). But see *Horton v. Liberty Mutual Ins. Co.*, 367 U.S. 348, 350-54 (1961).

Nonetheless, this court finds that it does not have subject matter jurisdiction over this removed cause of action and, accordingly, remands this cause to the Chancery Court of Monroe County. An appropriate order in accordance with this opinion shall be issued.

This the ____ day of August, 1997.

CHIEF JUDGE